

AMENDED IN ASSEMBLY MAY 30, 2017

AMENDED IN ASSEMBLY APRIL 24, 2017

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 699

Introduced by Assembly Members O'Donnell and Chiu
(Coauthors: Assembly Members Daly, Cristina Garcia, Gipson,
***Gloria*, and Santiago)**
(Coauthor: Senator Mendoza)

February 15, 2017

An act to amend Sections 200, 220, and 234.1 of, and to add Article 5.7 (commencing with Section 234.7) to Chapter 2 of Part 1 of Division 1 of Title 1 of, the Education Code, relating to educational equity.

LEGISLATIVE COUNSEL'S DIGEST

AB 699, as amended, O'Donnell. Educational equity: immigration status.

Existing law states the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other specified characteristic, equal rights and opportunities in the educational institutions of the state. Existing law prohibits discrimination on the basis of those specific characteristics in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid. Existing law requires the State Department of Education to assess whether local educational agencies have taken certain actions related to educational equity, including

adopting a policy that prohibits, and adopting a process for receiving and investigating complaints of, discrimination, harassment, intimidation, and bullying based on those actual or perceived specified characteristics.

This bill would expressly include immigration status in the specified characteristics for purposes of those provisions. The bill would prohibit school officials and employees of a school district, county office of education, or charter school, except as required by state law, from collecting information or documents about the immigration status of pupils or their family members or allowing an officer or employee of United States Immigration and Customs Enforcement (ICE) to enter a schoolsite without providing valid identification, a written statement of purpose, a valid judicial ~~warrant or court order~~, *warrant, as defined*, and receiving approval from the superintendent of the school ~~district~~, *district or his or her designee*, the superintendent of the county office of ~~education~~, *education or his or her designee*, or the principal of the charter ~~school~~, *school or his or her designee*, as applicable. The bill would require the local educational agency, if the officer or employee of ICE meets those requirements, to limit access to facilities where pupils are not present. The bill would require the superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, to report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or employee of ICE in a manner that ensures the confidentiality and privacy of any potentially identifying information. The bill would encourage a school, when an employee of the school is aware that a pupil's parent or guardian is not available to care for the pupil, to work with parents or guardians to update the emergency contact information and not to contact Child Protective Services to arrange for the pupil's care unless the school is unable to arrange for care through the use of emergency contact information or instructions provided by the pupil's parent or guardian. The bill would require the governing board or body of a local educational agency to perform specified actions relating to pupils and immigration status, including, among others, providing ~~appropriate counseling to pupils who may be affected by enforcement activities of immigration agents~~, *information to parents and guardians, as appropriate, regarding their children's right to a free public education, regardless of immigration status or religious beliefs*. By

imposing additional duties on local educational agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The United States was founded on the principles of freedom
4 and opportunity and is a refuge for the oppressed, the persecuted,
5 and those looking for a better life. We honor the attainment of
6 education for the betterment of the individual and the community.

7 (b) In June 1982, the United States Supreme Court issued Plyler
8 v. Doe (457 U.S. 202), a landmark decision holding that states
9 cannot constitutionally deny students a free public education based
10 on immigration status. The Supreme Court found that any resources
11 that might be saved from excluding undocumented children from
12 public schools were far outweighed by the harms imposed on
13 society at large from denying these students an education.

14 (c) For more than 30 years, Plyler v. Doe has ensured equal
15 access to education for children regardless of immigration status,
16 but anti-immigrant sentiment continues to threaten that right,
17 including states and localities passing measures and adopting
18 unofficial policies that violate the spirit of the United States
19 Supreme Court's decision.

20 (d) Nowhere else in the nation has been more enriched by the
21 contributions of immigrants than California, which is home to
22 more foreign-born residents than anywhere else in the country.
23 Immigrants play a vital role in all sectors of our state's economy
24 and are valuable and essential members of the California
25 community.

1 (e) Almost one in three Californians is foreign born and one in
2 two children in California has at least one immigrant parent.

3 (f) Children are entitled to a public education while in California,
4 regardless of immigration status. With adequate protections in
5 place, we will show that we are willing to take the steps necessary
6 to ensure that our students have every opportunity to continue their
7 education without fear or undue risk.

8 (g) A positive school climate is one in which students, educators,
9 and staff feel safe, welcomed, supported, and connected. Studies
10 show that healthy school climates contribute to academic
11 achievement and other positive outcomes for students. In an effort
12 to create a positive school climate, California schools must take
13 steps to protect the integrity of their learning environments for all
14 children.

15 (h) With great risks of changes to approaches to immigration
16 policies and enforcement at the federal level, it is more important
17 than ever for California to work to protect students and ensure
18 that, regardless of their immigration status, they may continue to
19 take advantage of the education to which they are entitled, free
20 from intimidation or risk of a loss of access to resources and
21 programs that other students enjoy.

22 (i) The amendment of Sections 200, 220, and 234.1 of the
23 Education Code made by this act does not constitute a change in,
24 but is declaratory of, existing law.

25 SEC. 2. Section 200 of the Education Code is amended to read:

26 200. It is the policy of the State of California to afford all
27 persons in public schools, regardless of their disability, gender,
28 gender identity, gender expression, nationality, race or ethnicity,
29 religion, sexual orientation, or any other characteristic that is
30 contained in the definition of hate crimes set forth in Section 422.55
31 of the Penal Code, including immigration status, equal rights, and
32 opportunities in the educational institutions of the state. The
33 purpose of this chapter is to prohibit acts that are contrary to that
34 policy and to provide remedies therefor.

35 SEC. 3. Section 220 of the Education Code is amended to read:

36 220. No person shall be subjected to discrimination on the basis
37 of disability, gender, gender identity, gender expression,
38 nationality, race or ethnicity, religion, sexual orientation, or any
39 other characteristic that is contained in the definition of hate crimes
40 set forth in Section 422.55 of the Penal Code, including

1 immigration status, in any program or activity conducted by an
2 educational institution that receives, or benefits from, state financial
3 assistance or enrolls pupils who receive state student financial aid.

4 SEC. 4. Section 234.1 of the Education Code is amended to
5 read:

6 234.1. The department, pursuant to subdivision (b) of Section
7 64001, shall monitor adherence to the requirements of Chapter 5.3
8 (commencing with Section 4900) of Division 1 of Title 5 of the
9 California Code of Regulations and this chapter as part of its
10 regular monitoring and review of local educational agencies,
11 commonly known as the Categorical Program Monitoring process.
12 The department shall assess whether local educational agencies
13 have done all of the following:

14 (a) Adopted a policy that prohibits discrimination, harassment,
15 intimidation, and bullying based on the actual or perceived
16 characteristics set forth in Section 422.55 of the Penal Code,
17 including immigration status, and Section 220 of this code, and
18 disability, gender, gender identity, gender expression, nationality,
19 race or ethnicity, religion, sexual orientation, or association with
20 a person or group with one or more of these actual or perceived
21 characteristics. The policy shall include a statement that the policy
22 applies to all acts related to school activity or school attendance
23 occurring within a school under the jurisdiction of the
24 superintendent of the school district.

25 (b) Adopted a process for receiving and investigating complaints
26 of discrimination, harassment, intimidation, and bullying based
27 on any of the actual or perceived characteristics set forth in Section
28 422.55 of the Penal Code, including immigration status, and
29 Section 220 of this code, and disability, gender, gender identity,
30 gender expression, nationality, race or ethnicity, religion, sexual
31 orientation, or association with a person or group with one or more
32 of these actual or perceived characteristics. The complaint process
33 shall include, but not be limited to, all of the following:

34 (1) A requirement that, if school personnel witness an act of
35 discrimination, harassment, intimidation, or bullying, they shall
36 take immediate steps to intervene when safe to do so.

37 (2) A timeline to investigate and resolve complaints of
38 discrimination, harassment, intimidation, or bullying that shall be
39 followed by all schools under the jurisdiction of the school district.

1 (3) An appeal process afforded to the complainant should he or
2 she disagree with the resolution of a complaint filed pursuant to
3 this section.

4 (4) All forms developed pursuant to this process shall be
5 translated pursuant to Section 48985.

6 (c) Publicized antidiscrimination, anti-harassment,
7 anti-intimidation, and antibullying policies adopted pursuant to
8 subdivision (a), including information about the manner in which
9 to file a complaint, to pupils, parents, employees, agents of the
10 governing board, and the general public. The information shall be
11 translated pursuant to Section 48985.

12 (d) (1) Provided, incident to the publicizing described in
13 subdivision (c), to certificated schoolsite employees who serve
14 pupils in any of grades 7 to 12, inclusive, who are employed by
15 the local educational agency, information on existing schoolsite
16 and community resources related to the support of lesbian, gay,
17 bisexual, transgender, and questioning (LGBTQ) pupils, or related
18 to the support of pupils who may face bias or bullying on the basis
19 of religious affiliation, or perceived religious affiliation.

20 (2) As used in this subdivision, both of the following apply:

21 (A) Schoolsite resources may include, but are not limited to,
22 peer support or affinity clubs and organizations, safe spaces for
23 LGBTQ or other at-risk pupils, counseling services, staff who have
24 received antibias or other training aimed at supporting these pupils
25 or who serve as designated support to these pupils, health and other
26 curriculum materials that are inclusive of, and relevant to, these
27 pupils, online training developed pursuant to Section 32283.5, and
28 other policies adopted pursuant to this article, including related
29 complaint procedures.

30 (B) Community resources may include, but are not limited to,
31 community-based organizations that provide support to LGBTQ
32 or other at-risk pupils and their families, and physical and mental
33 health providers with experience or training in treating or
34 supporting these pupils.

35 (e) Posted the policy established pursuant to subdivision (a) in
36 all schools and offices, including staff lounges and pupil
37 government meeting rooms.

38 (f) Maintained documentation of complaints and their resolution
39 for a minimum of one review cycle.

1 (g) Ensured that complainants are protected from retaliation
2 and that the identity of a complainant alleging discrimination,
3 harassment, intimidation, or bullying remains confidential, as
4 appropriate.

5 (h) Identified a responsible local educational agency officer for
6 ensuring school district or county office of education compliance
7 with the requirements of Chapter 5.3 (commencing with Section
8 4900) of Division 1 of Title 5 of the California Code of Regulations
9 and this chapter.

10 (i) Nothing in this section shall be construed to require school
11 employees to engage with religious institutions in the course of
12 identifying community support resources pursuant to this section.

13 SEC. 5. Article 5.7 (commencing with Section 234.7) is added
14 to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education
15 Code, to read:

16
17 Article 5.7. Pupil Protections Relating to Immigration Status
18

19 234.7. (a) Except as required by state law, school officials and
20 employees of a local educational agency shall not do either of the
21 following:

22 (1) Collect information or documents about the immigration
23 status of pupils or their family members.

24 (2) Allow an officer or employee of United States Immigration
25 and Customs Enforcement (ICE) to enter a schoolsite for any
26 purpose without providing valid identification, a written statement
27 of purpose, a valid judicial ~~warrant or court order~~, *warrant*, and
28 receiving approval from the superintendent of the school ~~district~~,
29 *district or his or her designee*, the superintendent of the county
30 office of ~~education~~, *education or his or her designee*, or the
31 principal of the charter ~~school~~, *school or his or her designee*, as
32 applicable.

33 (b) (1) If an officer or employee of ICE meets all of the
34 requirements set forth in paragraph (2) of subdivision (a), the local
35 educational agency shall limit access to facilities where pupils are
36 not present.

37 (2) The superintendent of a school district, the superintendent
38 of a county office of education, and the principal of a charter
39 school, as applicable, shall report to the respective governing board
40 or body of the local educational agency in a timely manner any

1 requests for information or access to a schoolsite by an officer or
2 employee of ICE in a manner that ensures the confidentiality and
3 privacy of any potentially identifying information.

4 (c) If an employee of a school is aware that a pupil's parent or
5 guardian is not available to care for the pupil, the school shall first
6 exhaust any parental instruction relating to the pupil's care in the
7 emergency contact information it has for the pupil to arrange for
8 the pupil's care. A school is encouraged to work with parents or
9 guardians to update the emergency contact information and not to
10 contact Child Protective Services to arrange for the pupil's care
11 unless the school is unable to arrange for care through the use of
12 emergency contact information or other information or instructions
13 provided by the parent or guardian.

14 (d) The governing board or body of a local educational agency
15 shall do ~~all~~ *both of* the following:

16 ~~(1) Provide appropriate counseling to pupils who may be~~
17 ~~affected by enforcement activities of immigration agents that occur~~
18 ~~at a pupil's home, in a pupil's community, or at the place of~~
19 ~~employment of a pupil's parent or guardian.~~

20 ~~(2)~~
21 (1) Provide information to parents and guardians, as appropriate,
22 regarding their children's right to a free public education, regardless
23 of immigration status or religious beliefs. This information shall
24 include written "know your rights" information relating to
25 immigration enforcement and include referrals to reputable
26 community and legal organizations that offer assistance to
27 ~~immigrants.~~ *immigrants and may be provided in the annual*
28 *notification to parents and guardians pursuant to Section 48980*
29 *or any other cost-effective means determined by the local*
30 *educational agency.*

31 ~~(3)~~
32 (2) Educate pupils about the negative impact of bullying other
33 pupils based on their actual or perceived immigration status or
34 their religious beliefs and customs.

35 (e) Nothing in this section prohibits the governing board or body
36 of a local educational agency from establishing stronger standards
37 and protections.

38 (f) For purposes of this section, ~~"local~~ *the following terms have*
39 *the following meanings:*

1 (1) *“Judicial warrant” means a warrant based on probable*
2 *cause and issued by a federal judge or a federal magistrate judge*
3 *that authorizes federal immigration authorities to take into custody*
4 *the person who is the subject of the warrant.*

5 (2) *“Local educational agency” means a school district, county*
6 *office of education, or charter school.*

7 SEC. 6. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.